IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 553 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

JIVATRAM V KAKVANI

Appearance:

PUBLIC PROSECUTOR for Appellant.

MR AD SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 08/10/98

ORAL JUDGEMENT

The respondent Jivatram Variyaldas Kakvani was charged to have committed offences punishable under secs.279, 304-A, 337, 338 of Indian Penal Code, and secs.112, 116 and 89 of the Motor Vehicles Act. He was tried by the learned Metropolitan Magistrate, Court No.17, Ahmedabad, in a Criminal Case No.3744/88 and came to be acquitted by judgment and order dtd.13.5.1991, by the Metropolitan Magistrate. Being aggrieved by the said

judgment and order, the State of Gujarat has preferred this appeal.

2. The facts of the case in short are that, as per the prosecution case the accused was driving Car No.GBY-455 on 18th February, 1988. When he was passing by Kubernagar Bazar area, at about 10.30 a.m., he drove the car in a rash and negligent manner which ultimately resulted into an accident which caused death of minor Vijay, aged about 10 years, and injuries to several other persons. The car went off the road, ran over the footpath and dashed with the electrical fuse box. First Information Report was lodged and registered the offence at Sardarnagar Police Station vide C.R.No.I 35/88. The matter was investigated upon and charge-sheet filed.

3. At the trial, the accused denied the charges against him and preferred to face the trial. Considering the evidence on record, learned Metropolitan Magistrate came to a conclusion that the prosecution has failed to prove the case against the accused and acquitted him by the impugned judgment and order. It is this impugned judgment and order which is the subject matter of challenge in this appeal.

4. Heard Mr. K.C. Shah, learned Addl. Public Prosecutor for the Appellant-State. His one and only argument is that the learned Magistrate has not believed witness Shanta Ex.14, who identified the accused as the person driving the car in question at the relevant time, and states in detail the manner in which the accident occurred. She had no enmity against the accused and there is no reason to disbelieve the version of this witness. The learned Magistrate had rejected the version of this witness only on the ground that the other witness have not supported, and therefore, it is not safe or proper to place reliance on evidence of this sole supporting witness. Mr. Shah urged that, therefore, this appeal may be allowed by setting aside the impugned judgment and order, and the accused person may be convicted.

5. Mr. A.D. Shah, learned counsel appearing for the respondent, submitted that all the prosecution witnesses, except witness Shanta and the police witnesses, have not supported the prosecution version. The prosecution case hangs only on the deposition of witness Shanta. He submitted that if the deposition of this witness is closely scrutinised, it is apparent there she could not have seen the actual occurrence of the incident, and she, therefore, could not have deposed

regarding criminal negligence of the driver of the vehicle in question, at the relevant time, nor could she have identified the driver. In her statement, she had not stated the name of the driver and no identification parade has been done by the investigating agency before bringing the case to the court. Under the circumstances, no reliance can be placed on the deposition of this witness. He, therefore, urged that the appeal may be dismissed.

6. This court has gone through the original record and proceedings and has closely scrutinised the evidence.

7. It transpies from the evidence that all witnesses except Shanta Ex.14, had not supported the prosecution case. No body has identified that the person who was driving the vehicle at the relevant time was the accused. The only witness that identified the accused is, Shanta. If her deposition Exh.14 is seen, it appears that, in examination-in-chief, she states that she had seen the person who was driving the car and he is the accused. Besides this, in examination-in-chief, she discussed the manner in which the accident occurred. The description is that the car went off the road and ran over the footpath and ultimately dashed with the electric fuse box and came to halt. But after her cross-examination is perused, it appears that, she had not seen the actual occurrence but she had only learnt about the incident after the car collided with the electric box and came to a halt. She then says that because her brother was injured, she started crying. She was confronted with the police statement and admits the above aspects. It is amply clear that incident occurred all of a sudden and naturally she could not be expected to have kept a close eye on the vehicle in question before the incident occurred, and after the incident occurred her attention was focussed towards her brother. It transpies that she had not disclosed the name of the driver of the car in her police statement and naturally one cannot be expected to give the name. The possibility of her having seen the driver of the culprit car gets ruled out or atleast becomes doubtful when the investigating agency failed to arrange for a test identification parade. This witness, for the first time identified, in court, the person who was driving the car. Identification by a witness for the first time in a court would be a very weak piece of evidence, and in absence of any corroboration or supporting evidence, it would be risky to convict a person on the sole testimony of said eye witness, and therefore, it cannot be said that the conclusion arrived at by the learned Magistrate is errorneous either

factually or legally. This case, is therefore, not found to be a fit case, wherein, interference in an acquittal appeal is called for. Appeal is, therefore, found to be devoid of merits and is accordingly dismissed.

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